

3891

SECOND AMENDED AND RESTATED PROFFERS

THESE SECOND AMENDED AND RESTATED PROFFERS, made as of this 16th day of December, 1993, by IRONBOUND COMPANY, L.C., a Virginia limited liability company ("Owner").

RECITALS:

A. Owner is the owner of certain real property in James City County, Virginia (hereinafter referred to as the "Property") and more particularly described as follows:

Those certain parcels of land containing 10.68 acres a portion of which is now zoned B-1, with proffers and a portion B-1, without proffers, and 27.82 acres now zoned R-2, with proffers, at the intersection of State Routes 5 and 615 in James City County, Virginia and shown and set out on the plans entitled "Shopping Center Master Plan for Ironbound Company, L.C." and "Dedicated Open Space Revisions" made by Langley and McDonald, P.C. dated October 25, 1993 (the "Plan").

B. A portion of the Property is zoned B-1 with proffers, a portion is zoned B-1 without proffers and a portion is zoned R-2 with proffers. Owner desires to amend and restate the existing proffers dated April 26, 1993 and recorded in James City County Deed Book 628 at page 834 and to extend such proffers to the portion of the Property now zoned B-1 without proffers.

C. Owner, for itself and its successors and assigns, desires to offer to the County certain conditions on the development of the Property that are not generally applicable to

land zoned B-1 or R-2 for the protection of the community that are intended to mitigate possible impacts from the development on the surrounding area.

NOW THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of James City of the requested rezoning, and pursuant to Section 15.1-491.1 et. seq. of the Code of Virginia, 1950, as amended, Owner agrees that it will meet and comply with all of the following conditions for the development of the Property.

CONDITIONS

1. Traffic Improvements. a. The turn lanes described below shall be constructed or the completion thereof bonded, with surety acceptable to the County Attorney, prior to issuance of a certificate of occupancy for the B-1 property:

(i) for southbound traffic on Route 615, a left turn lane into the principal shopping center entrance on Route 615 generally as shown on the Plan;

(ii) for traffic on northbound Route 615, a right turn lane into the principal shopping center entrance on Route 615 generally as shown on the Plan;

(iii) for northbound traffic on Route 615 turning west onto Route 5, a left turn lane;

(iv) for westbound traffic on Route 5 turning south onto Route 615, a left turn lane (including curbing along the southern right of way of Route 5, if needed);

(v) for eastbound traffic on Route 5 a left turn

lane onto northbound Route 615 to be constructed within the existing Route 5 right of way;

(vi) for eastbound traffic on Route 5, a right turn lane into the shopping center entrance on Route 5; and

(vii) for westbound traffic on Route 5, a left turn lane into the shopping center entrance on Route 5.

b. The turn lanes described below shall be constructed or the completion thereof bonded, with surety acceptable to the County Attorney, prior to issuance of a certificate of occupancy for the R-2 property:

(i) for southbound traffic on Route 615, a left turn lane into the residential entrance shown on the Plan; and

(ii) for northbound traffic on Route 615, a right turn lane into the residential entrance .

c. All turn lanes proffered above shall be constructed in accordance with the requirements of the Virginia Department of Transportation ("VDOT").

d. Owner shall install all required signal modifications to the traffic signal at the intersection of Route 5 and Route 615 to accommodate the turn lanes proffered above upon completion of the proffered turn lanes.

2. Right of Way Dedication. Owner shall, upon the request of County, dedicate to the County the portions of the Property shown on the Plan as right of way to be dedicated to VDOT along the Route 5 and Route 615 frontage of the Property.

3. Entrances. There shall be two (2) entrances to the property zoned B-1 from Route 615 and one entrance to the Property zoned B-1 from Route 5 located generally as shown on the Plan. The service entrance to the B-1 property from Ironbound Road shall be constructed opposite and, to the extent possible and as permitted by VDOT, aligned with the entrance to the Clara Byrd Baker Elementary School. Owner shall install a "Delivery Vehicles Only" or similarly worded sign at the service entrance. If and when requested by VDOT, Owner shall make the necessary alterations and improvements to the entrances on Route 615 proffered above to install (or pay the costs of installation of) a traffic signal at the intersection of the service entrance to the B-1 property and the entrance to the Elementary School and to take such steps requested by VDOT to prevent traffic from turning left from southbound Ironbound Road into the principal shopping center entrance to the B-1 property or from leaving the principal entrance and turning left onto southbound Ironbound Road.

4. Stormwater Management. BMPs shall be designed, installed and maintained to control surface water runoff from the Property meeting the requirements of the County's Chesapeake Bay Preservation ordinance. The stormwater detention basin shall be located in the lower reaches of the major ravine system in the northeastern part of the Property.

5. Conservation Area. The area shown as "Conservation Area" on the Plan shall be left undisturbed and shall remain in its natural state, except for utilities and recreational

facilities approved by the County Engineer and stormwater BMPs and other sedimentation and erosion control structures and devices proffered pursuant to condition 4 hereof. Except as permitted by the preceding sentence, no land disturbing, clearing or building shall take place in the Conservation Area. No lot platted in the R-2 area shall encroach into the Conservation Area.

6. Conservation Area Maintenance. The Conservation Area shall be conveyed to a property owners' association satisfactory to the County Attorney to be organized by the developer in which all lot owners shall be members and which shall be responsible for maintenance, including maintenance of stormwater BMPs and other sedimentation and erosion and control structures or devices located in such Conservation Area, and trash removal in such area. Until conveyance of such area to the property owners' association, Owner shall be responsible for such maintenance. If requested by the County, Owner or the homeowners' association shall grant to the County a conservation easement over the Conservation Area in form and substance satisfactory to the County and Owner or the association. Before final approval of any subdivision plat or site plan of the B-1 portion of the Property, the owner(s) of the B-1 property shall enter into an agreement with the owner of the R-2 property in form satisfactory to the County Attorney, providing that the owner(s) of the B-1 property will contribute on an equitable basis to the costs of the maintenance of the stormwater BMP to be located in the

Conservation Area.

7. Shopping Center Use. The entire 10.68 acres of the B-1 portion of the Property shall be used only for a "shopping center" as hereinafter defined (which may be constructed in phases) and two outparcels as shown on the Plan. The shopping center and out parcels shall contain no more than 90,000 square feet of floor area (as defined in the Zoning Ordinance) except for loading docks and loading areas for the grocery store. For the purposes of this Proffer a shopping center is defined as:

A group of one (1) or more architecturally unified commercial establishments built on a site (which may include out parcels) which is planned, developed, owned and managed as an operating unit and which provides on-site parking in definite relationship to the types and sizes of the commercial establishments therein and which may include retail and office uses.

The following uses, which otherwise are permitted under the B-1 classification of the Zoning Ordinance, shall not be permitted on any of the area zoned B-1:

Automobile service stations;
Hotels, motels, tourist homes and convention centers;
Schools, fire stations, post offices, houses of worship and libraries;
Cemeteries;
Marinas, docks, piers, yacht, boat basins;
Wholesale and retail marine or waterfront businesses,
Radio and television stations and accessory antenna or towers,

Convenience store with sale of fuel.

8. Residential Use. A maximum of 63 single-family detached residential lots only shall be permitted on the property to be rezoned R-2. No other residential use shall be made of the

property rezoned R-2. No more than one single family dwelling shall be built on each lot.

9. Internal Buffer. There shall be a buffer area 75' in width in the area of the northern boundary line of the R-2 property area where it abuts at the B-1 property in the location shown on the Plan. Such buffer shall remain in its natural state, except for pedestrian paths, utilities, stormwater BMPs and other sedimentation and erosion control structures and devices proffered, and shall be augmented where necessary by additional planting, if requested, by the Development Review Committee of the County.

10. Open Space. Areas shown as "Designated Open Space" in the R-2 area on the Plan shall be left in their natural vegetated state, except for utilities and recreational facilities approved by the Development Review Committee or landscaped in accordance with plans approved by the Development Review Committee. If grading, as approved by the Development Review Committee, of any part of such areas requires the removal of natural vegetation, such vegetation shall be replaced with appropriate screen planting approved by the Development Review Committee. Such Designated Open Areas shall be conveyed to the aforementioned property owners' association which shall be responsible for all maintenance and trash removal in such areas. Until conveyance of such areas to the association, Owner shall be responsible for such maintenance.

11. Public Roads. All streets and roads in the R-2

portion of the property shall be built to the specifications of VDOT and shall be dedicated to it for maintenance.

12. Greenbelt Buffer. Owner shall designate a greenbelt buffer 50' in width in the location shown on the Plan along the Route 5 and Route 615 frontage of the B-1 property. Such greenbelt buffer shall contain enhanced landscaping in accordance with a landscape plan approved by the Development Review Committee. No improvements shall be located in the greenbelt buffer except for approved utilities, signs, sidewalks, bikeways and entrances as approved by the Development Review Committee.

13. Signs. The shopping center's primary sign shall be a monument type sign with a height not to exceed 10 feet and shall be located generally as shown on the Plan. Illuminated building graphics (other than internally illuminated block letter building mounted signs), lighted building trim and accents shall be prohibited. Internally illuminated block letter building mounted signs are not prohibited by this condition.

14. Architectural. The buildings (exclusive of roofing) in the B-1 property shall be constructed with exterior building materials of synthetic stucco, brick, wood or glass or some combination thereof and shall be of harmonious and/or uniform architectural design as determined by the Director of Planning and of neutral colors. Owner shall endeavor to design the buildings within the shopping center with varied roof lines, wall articulations, window placements and other features to attempt to reduce the mass and unbroken building lines that may occur in

certain standard building designs. No building in the B-1 portion of the Property shall have a plain concrete block or metal facade facing Route 5 or Route 615.

15. Screening. Mechanical equipment and dumpsters serving buildings on the B-1 portion of the Property shall be screened (visually and for noise) from Route 5 and Route 615 by screening approved by the Development Review Committee.

16. Service Areas and Parking. Service bays and loading docks for buildings located on the outparcels in the B-1 portion of the Property shall not be located on the side of the building fronting on Route 5. Parking spaces serving the outparcels shall be placed behind the building face fronting on Route 5.

17. Bikeways. Owner shall construct Class III bikeways as defined in Williamsburg/James City/York 2010 Regional Bikeway System Plan along the Route 5 and Route 615 frontage of the Property.

18. Pedestrian Path. Owner shall provide a pedestrian path between the B-1 and the R-2 portions of the Property in a location approved by the Development Review Committee.

19. School Zone Signs. Owner shall purchase and install (or pay the cost of the purchase and installation of) two school zone signs along Route 615 in front of Clara Byrd Baker School.

IN WITNESS WHEREOF, Owner, intending to be legally bound, has duly executed these Proffers.

IRONBOUND COMPANY, L.C.

By: [Signature]
Title: MANAGER

STATE OF VIRGINIA AT LARGE

BOOK 674 PAGE 469

CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this 16 day of December, 1993, by L. Lewis Waltrip, II, Manager of IRONBOUND COMPANY, L.C., on behalf of the company.

Stephen A. Zane
NOTARY PUBLIC

My commission expires: 1/31/96

VIRGINIA: City of Williamsburg and County of James City, to WIT:
In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 8 day of March, 1994. This Instrument was presented with certificate annexed and admitted to record at 9:20 o'clock
Teste: Helene S. Ward, Clerk
by [Signature]
Deputy Clerk

Ellen Taylor Howard

ELLEN TAYLOR HOWARD

By: *William C. Howard* (SEAL)

WILLIAM C. HOWARD

her Attorney-in-Fact

STATE OF VIRGINIA

City/County of Newport News, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of December, 1986, by William C. Howard, as Attorney-in-Fact for Ellen Taylor Howard.

Jna A. Howard
Notary Public

My commission expires:

7-10-87

VIRGINIA: City of Williamsburg and County of

James City, to-wit:

In the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City the

26 day of March, 1987. This Agreement

was read with certificate annexed and admitted 1:14 o'clock

Teste: William S. Ward, Clerk

by *William S. Ward*

Deputy Clerk

SHORT, SHORT, TELSTAD & KERR, P.C., ATTORNEYS AT LAW, 710 DENBIGH BLVD., BLDG. #1, SUITE A, NEWPORT NEWS, VA. 23602

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

Y1
DATE: 03/08/94 TIME: 09:20:21 ACCOUNT: 095CLR940003891 RECEIPT: 94000006050):
CASHIER: CHB REG: WB04 TYPE: OTHER PAYMENT: FULL PAYMENT Z
INSTRUMENT : 940003891 BOOK: 0 PAGE: 0 RECORDED: 03/08/94 AT 09:20
GRANTOR NAME : IRONBOUND COMPANY LC EX: N LOCALITY: CD
GRANTEE NAME : IRONBOUND COMPANY LC EX: N PERCENT: 100%
AND ADDRESS :
RECEIVED OF : JCCO DATE OF DEED: 12/16/93
CHECK : \$19.00
DESCRIPTION 1: 10.68 AC SHOPPING CENTER MASTER PLAN
2: AMENDED & RESTATED PROFFERS
CONSIDERATION: .00 ASSUME/VAL: .00 MAP:
CODE DESCRIPTION PAID CODE DESCRIPTION PAID
301 DEEDS 18.00 145 VSLF 1.00
TENDERED : 19.00
AMOUNT PAID: 19.00
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD

3318

00 105 1 1853 2098164

FULL PAYMENT
CASE NUMBER
01/LR870318
PAYOR NAME
06/J000
GRANTOR
22/ELLEN TAYLOR HOWARD
GRANTEE
23/JAMES CITY CO
DESC OF PROPERTY
24/SEC 14 ELLEN TAYLOR HOWARD
DATE OF INSTRUMENT
25/12/23/86
PURPOSE
33/ARREE

301 FEES	1	11.00
AMOUNT TENDERED		11.00
CHANGE		.00
TOTAL		11.00

WMSBURG/JAMES CITY CIRCUIT CT

03/26/87 13:14